IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Crl.MC.No. 58 of 2004(B)

ST.591/1999 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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PETITIONERS/ACCUSED 1 TO 4:

1. M/S. RECKITT PIRAMAL LIMITED, (FORMERLY KNOWN AS GLOBAL HOME PRODUCTS LTD.) 100, CENTRE POINT, DR.B.R. AMBEDKAR ROAD, PAREL MUMBAI-400 012, REP. BY AUTHORISED SIGNATORY P.R. VYTHILINGAM.

2. ASHOK PRADHAN, S/O.BHALCHANDRA S.PRADHAN B-56, GREATER KAILASH PT.1, NEW DELHI-110 048.

3. NITIN GHADIYAR, S/O. VITHAL GHADIYAR 704, BHARAT APARTMENTS, SHERLY, RAJAN ROAD, BANDRA, MUMBAI-400 050.

4. ZAHIR ISMAIL, KOZIKAPARAMBIL HOUSE, KONTHURUTHY, ERNAKULAM, G.P.A.HOLDER OF M/S. RECKITT PIRAMAL LTD.,39/608 F ALAPPATT EXTENSION ROAD, RAVIPURAM, KOCHI-16.

BY ADV. SRI.MATHEW ZACHARIAH
SRI.KOSHY GEORGE

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. THE DRUG INSPECTOR, OFFICE OF THE DRUG INSPECTOR, CIVIL STATION, KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 58 of 2004

ORDER

Petitioners are Accused Nos.1 to 4 in S.T.No. 591/99 on the file of the Chief Judicial Magistrate's Court, Kozhikode. Annexure-F complaint was filed by the Drugs Inspector, Kozhikode against the petitioner and two others complaining of commission by them of offences punishable under Sections 17C(c) and 27A(ii) of the Drugs and Cosmetics Act, 1940. Petitioners 1 to 3 are stated to be the Directors of the company M/s. Reckitt Piramal Limited, engaged in marketing of the cosmetic "Lacto Calamine Lotion", manufactured by M/s.Lacto Cosmetics (Vapi) Private Limited.

2. The allegation against the petitioners is that during the inspection of the fifth accused firm M/s.Ashok Drugs at Kozhikode some cosmetics were found stocked for sale along with the drugs, which, inter alia, took in Lacto Calamine Lotion (Plain) and Lacto Calamine Lotion (Sandal) in 60 ml

and 30 ml packings respectively, manufactured by M/s.Lacto Cosmetics (Vapi) Private Limited and marketed by M/s.Global Home Products Limited, Piramal Enterprises, 100, Centre Point, Dr.B.R.Ambedkar Road, Mumbai, presently known as M/s.Reckitt Piramal Limited, the first accused firm. On verification of the labels of those cosmetics, it is seen claimed that Lacto Calamine Lotion is meant for soft soother skin and fairer complexion, ideal make up base, cooling and soothing lotion, recommended in minor skin conditions anti rash/ allergy and for treatment of acne and pimples, whereas, it is only a cosmetic and not a drug. According to the Drugs Inspector, the said labelling has misbranded the commodity.

3. It is contended by the learned counsel for the petitioners that under section 34(1) of the Drugs and Cosmetics Act, when an offence under the said Act has been committed by the company, every person, who, at the time when the offence was

committed, was in charge of and was responsible to the company for the conduct of business of the company as well as the company are to be deemed to be guilty of the offence and shall be liable to be proceeded against and punished, but, in the instant case, for the mere reason that petitioners 1 to 3 are Directors of the company, they are sought to be fastened with liability and that simply because a person is a Director of a company, it does not necessarily mean that he fulfils both the above requirements so as to render him liable. In the instant case, there is no specific averment in Annexure-F complaint as to in what manner petitioners 1 to 3, who are the Directors of the company, were responsible to the company for the conduct of business of the company, except that they are the Directors. With the said averment alone petitioners 1 to 3, who are the Directors, cannot be fastened with liability for the offence complained of.

In the result, this Crl.M.C. is partly allowed. I quash Annexure-F complaint inasmuch as it relates personally to the Directors of the first petitioner company. All the same, the complaint can be proceeded against the first petitioner company, represented by the fourth petitioner, General Power of Attorney Holder of the company. There is no reason to quash the proceedings as against the first petitioner company and the fourth petitioner, who is the General Power of Attorney Holder as also against Accused Nos.5 and 6 in Annexure-F complaint, who are not parties in this Crl.M.C. The fourth petitioner shall be at liberty to take up all the contentions available to him and the first petitioner company, at the trial of the case.

6th August, 2007 (K.P.Balachandran, Judge)

tkv